IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.391 OF 2005

Navsamata Transport Agency & Anr. ..Appellants

Versus

Nav Bharat Motor Agency ..Respndents

Mr.P.M.Arjunwadkar i/b G.S.Godbole for appellants
Mr.A.A.Kumbhakoni, Asso.General with V.V.Purwant for respondents

CORAM : P.V.KAKADE, J.

DATE : 12th JULY, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by District Judge, Solapur dated 23.12.2004 dismissing the appeal and confirming the judgment and decree passed by Civil

Judge, Senior Division, Solapur dated 18.6.2002 whereby the defendants are directed to pay the suit amount at the foot of suit transaction between the parties.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The only question is sought to be raised that the defendants did not filed written statement in the lower court and the trial court proceeded in absence of said Written Statement on record. The learned trial judge appears to have adjudicated the entire dispute on the basis of plaintiffs'' oral as well as documentary evidence while coming to the conclusion that the suit deserves to be decreed. The appeal was carried to the District Court. The learned District Judge confirmed the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. In this regard it is to be noted that there is no substantial question of law involved in this appeal. The only question sought to be raised is that the defendants did not get an opportunity to defend the suit properly in absence of their written statement which

was, according to the learned counsel, omission or mistake on the part of their advocate, and therefore, it was submitted that they should not be made to suffer for advocate's omission. However, in this regard it must be noted that even though written statement was not filed by the concerned advocate, nobody precluded them from cross-examining the plaintiff and challenge his oral as well as documentary evidence, nor there was any ban upon them to enter into the witness box and/or production of any evidence in support of their defence to challenge the plaintiffs'' case. There is no explanation coming from the appellants-defendants as to why they did not appear in the trial in the lower court, especially when they knew that no written statement was filed by their advocate. Moreover, perusal of the judgments of both the courts below have shown that the trial court has relied upon the evidence led by the plaintiff independently and has not harped upon the absence of written statement by the defendants while decreeing the suit.

5. The learned counsel for the appellants submitted that they are ready to deposit the entire decretal amount in the trial court along with costs of the

proceedings and on that count the matter should be remanded to the lower court for hearing afresh after giving opportunity to file written statement. However, in this regard, as I have noted earlier, the record shows that the plaintiffs' evidence which is on record is considered by both the courts below independently in order to come to the conclusion regarding the liability of the defendants without relying on the fact that there was no written statement on record.

6. In the result the appeal has no merits and stands dismissed. Consequently Civil Application No.657 of 2005 also stands dismissed.

.